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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,086	11/29/2004	Eiji Kasutani	18463	9654
7590 Paul J Esatto Jr Scully Scott Murphy & Presser 400 Garden City Plaza Suite 300 Garden City, NY 11530			EXAMINER PATEL, JAYESH A	
			ART UNIT 2624	PAPER NUMBER
			MAIL DATE 01/22/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/516,086

**Applicant(s)**

KASUTANI ET AL.

**Examiner**

JAYESH A. PATEL

**Art Unit**

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 6-8, 11 and 16-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-5, 9, 10, 12-15, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Response to Arguments***

The applicant's argues on page 8 of the remarks that Shiiyama does not disclose the image sequence as claimed. First of all applicant gives an example that the image sequence is a video, however video is not claimed. Shiiyama discloses two original images in para 0027 which shows that the images have a sequence like one and two. Shiiyama also discloses MPEG-7 at para 0003 and MPEG movie at para 0104 which is automatic image sequence and one of ordinary skill in the art knows that MPEG movie is for sequence of images. The applicant's arguments with respect to claim 5 are persuasive and therefore the previous rejections are withdrawn. Upon further consideration and search the claims are rejected as follows.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 10 is rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent<sup>1</sup> and recent Federal Circuit decisions<sup>2</sup> indicate that a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2)

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<sup>1</sup> *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

<sup>2</sup> *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claim(s) recite a series of steps or acts to be performed, the claim(s) neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process. For example... **(the method is not tied to another statutory category i.e it is not clear wher the steps are accomplished”)**.

*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

<sup>1</sup> *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9-10, 12-15 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Leszek Cieplinski (MPEG-7 Color descriptors and their applications) hereafter Leszek published by Springer-Verlag (Monday January 01 2001).

1. Regarding claim 1, Leszek discloses an image description system (**Video database searching at page 17 para below table 3**) comprising:

a feature extracting unit extracting MPEG-7 Colorlayout features from respective frames of an image sequence (**color layout is combined with time series structure in searching of databases of video clips, page 17 lines 13-20.**

**In order for the searching in the database the features have to be searched, Page 17 section 3.4 lines 6-7 extracting color structure is disclosed**); and a representative feature calculating unit calculating a representative color layout feature representative of said image sequence (**calculated GoPF average or GoPF median are both representative of said image sequence**) from a group of said MPEG-7 Colorlayout features of all frames extracted by said feature extracting unit (**Page 18 section 3.5 where GoF where the extracted descriptors are combined and the aggregation or representative are average and median of the histograms of the different frames and Page 19 where the median at lines 4-13 improves the retrieval performance**).

2. Regarding claim 2, Leszek discloses the calculation of the representative color layout feature by averaging and median of the group of frames (**GoPF as seen on page 18 and 19**) and they are used for the retrieval from the database which indicates that the calculated representative features are stored in the database.

3. Regarding claim 3, Leszek discloses **(GoPF on page 18 and 19 where G indicates group and the calculated amounts are stored and retrieved from the database).**
4. Regarding Claim 4, the GoPF average is the calculated average of all the frames of the color layout descriptors **(page 18 equation 11).**
5. Regarding Claim 5, the GoPF median is the calculated median of all the frames of the color layout descriptors **(page 19 equation 12).**
6. Claim 9 is a software product claim of claim 1. See the explanation of claim 1.
7. Claim 10 is a method claim of claim 1. see the explanation of claim 1.
8. Regarding claim 12 see the explanation of claim 1. Leszek also discloses video database searching and browsing on page 17 lines 13-20 and 18 sections 3.5, Leszek further discloses on page 19 that with the calculation of median the retrieval performance is improved which is an indication of the query image sequence is searched from time series clips.
9. Regarding claim 13 see the explanation of claims 2 and 3.

**10.** Regarding claim 14 see the explanation of claim 4 where average values of the extracted descriptors are calculated.

**11.** Regarding claim 15 see the explanation of claim 5.

**12.** Regarding claim 22 see the explanation of claim 4 where average values of the extracted descriptors are calculated.

**13.** Regarding claim 22 see the explanation of claim 5.

#### ***Other cited prior art***

The other cited prior art made of record but not relied on are (IEEE Mpeg-7 color descriptor 0-7803-6725-1, 2001), (IEEE 1051-8215, 2001 Color and texture descriptors), (US 20030086627), (US 20030126125), (US 20020110276), (US 6801657), (US 6611628), (US 6593936), (US 20030026476), (US 6728314), (US 6968366).

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAYESH A. PATEL whose telephone number is (571)270-1227. The examiner can normally be reached on M-F 7.00am to 4.30

pm (5-4-9). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on 571-272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

01/16/  
/Jayesh A Patel/  
Examiner, Art Unit 2624

/Jingge Wu/  
Supervisory Patent Examiner, Art Unit 2624